STATE OF MICHIGAN

COURT OF APPEALS

FIRST NATIONAL BANK OF CHICAGO, as Trustee for BANKBOSTON HOME EQUITY LOAN TRUST 1998-1, Plaintiff/Appellee-Cross-Appellant,	FOR PUBLICATION September 9, 2008 9:00 a.m.
v	No. 272431 Court of Claims
DEPARTMENT OF TREASURY and DEPARTMENT OF NATURAL RESOURCES, Defendants/Appellants-Cross-Appellees.	LC No. 03-000057-MT Advance Sheets Version

Before: Kelly, P.J., and Cavanagh and O'Connell, J.J.

KELLY, P.J.

Defendants appeal as of right the judgment of the Court of Claims in favor of plaintiff following a bench trial. Plaintiff cross-appeals from the same judgment. We affirm.

I. Basic Facts and Procedural Background

This action arose after a parcel of residential property was foreclosed under the General Property Tax Act (GPTA), MCL 211.1 *et seq.*, for the failure to pay property taxes. The trial court heard the matter on stipulated facts and exhibits, and we set forth the relevant facts here.

Brandon Larsson and Mary Larsson were owners of the property located at 604 East Oak Street in St. Johns, Michigan. The property was identified in the recorded deed as lot 66 of Prince Estates No. 2. On October 31, 1997, the Larssons obtained a promissory note for $115,200 that was secured by a first mortgage to Homestead Mortgage Company (Homestead). The mortgage was recorded with the Clinton County register of deeds on November 5, 1997, containing an incorrect lot number, but identifying the correct street address and permanent tax

parcel identification number.[1] On November 7, 1997, Homestead assigned the first mortgage to Investaid Corporation (Investaid), and recorded that assignment on January 20, 1998. The recorded assignment included the correct lot number and street address.

The 1999 property taxes on the property, due February 14, 2000, were never paid.[2] On February 23, 2000, Investaid assigned the first mortgage to BankBoston, NA (BankBoston), formerly known as First Bank of Boston, and the assignment listed BankBoston's address as 100 Federal Street, Boston, Massachusetts, 02210. Shortly thereafter, BankBoston merged with Fleet National Bank and changed its name to FNB. FNB's registered address was 111 Westminster Street, Providence, Rhode Island, 02903-2305. On April 3, 2000, the assignment from Investaid to BankBoston was recorded and correctly described the subject property as lot 66 along with the correct street address and permanent tax parcel identification number.

On March 20, 2001, a certificate of forfeiture from the state was recorded describing the property as lot 66 and containing the correct street address and permanent tax parcel identification number. On April 15, 2001, an assignment of the first mortgage from BankBoston to plaintiff was recorded, again describing the property as lot 66 and containing the correct street address and permanent tax parcel identification number. Of particular note, the assignment listed plaintiff's address as 100 Federal Street, Boston, Massachusetts, 02210, the same address listed for BankBoston in the February 23, 2000, mortgage assignment.

On June 18, 2001, a petition for foreclosure was recorded describing the property as lot 66 and containing the correct permanent tax parcel identification number. On August 10, 2001, the first mortgage to Homestead Mortgage was rerecorded to clarify the property description, which described the property as lot 66 and contained the correct street address and permanent parcel identification number. On that same day, the assignment from Homestead to Investaid was rerecorded, describing the property as lot 66 and containing the correct street address. Also on that same day, the assignment from Investaid to BankBoston was rerecorded, describing the property as lot 66 and contained the correct street address and permanent parcel identification number.

Defendants contracted with Title Check, L.L.C. (Title Check), an outside source, to locate the addresses of interested parties through real estate and other records and to send notices of the forfeiture and foreclosure proceedings. Title Check sent notices of the forfeiture and foreclosures hearings through registered mail, return receipt requested, to Mary Larsson,

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[1] The Clinton County register of deeds interpreted the property description in the mortgage to read "lot 88 of Prince Estates No. 2," rather than "lot 66," and indexed it accordingly. According to the Clinton County Register of Deeds Carol Wooley, recorded mortgages cannot be searched by tax identification number and deeds recorded before 2001 cannot be searched by tax parcel identification number.

[2] On November 23, 1999, Brandon quitclaimed the property to Mary. The quitclaim deed was recorded on July 11, 2000.

Homestead, Investaid, and BankBoston, and those notices were delivered and signed for between December 6 through 19, 2001.

Except for BankBoston, Title Check sent all notices to the addresses recorded with the Clinton County register of deeds. With respect to BankBoston, rather than sending notices to the address recorded with the Clinton County register of deeds, the notices were addressed to 111 Westminster Street, C/O FNB, Providence, Rhode Island, 02903-2305 and to 15 Westminster Street, Providence, Rhode Island, 02903-2305. Title Check obtained the Rhode Island addresses from the Federal Deposit Insurance Corporation (FDIC) website listing for financial institutions. During all times relevant to these proceedings, plaintiff continued to maintain an office at 100 Federal Street, Boston, Massachusetts, to accept service of process regarding any mortgages where "BankBoston had been a party of interest in the mortgage or the security given for the mortgage," including the February 23, 2000, mortgage assignment. Title Check's tracing worksheet does not disclose that it was aware of the April 15, 2001, recorded mortgage assignment from BankBoston to plaintiff. No notices were mailed to either plaintiff or BankBoston at the address listed in the recorded mortgage assignment from Investaid to BankBoston. Notices of the forfeiture and foreclosure hearing were also published in the Clinton County News on December 23 and 30, 2001, and on January 6, 2002, listing, in part, BankBoston as an interested party.

Following a foreclosure hearing, a judgment of foreclosure was issued in the amount of $2,316.24. A July 30, 2002, notice of judgment of foreclosure was recorded on September 20, 2002. On September 23, 2002, the property was sold at auction for $109,000, with a minimum bid starting at $7,800 to cover delinquent taxes, interest, penalties, and costs associated with foreclosure.

Plaintiff brought this action against defendants, asserting that its mortgage interest had been foreclosed upon without due process. In its amended complaint, plaintiff asserted that the amount in excess of the taxes owed, penalties, and fees taken as authorized by MCL 211.78n amounted to an unconstitutional taking without just compensation. Plaintiff argued that while BankBoston and plaintiff's addresses were known at the time of forfeiture and foreclosure, notice was not sent to the required address, amounting to a denial due process. Plaintiff claimed that as an assignee and trustee of BankBoston, it was entitled to assert the rights of its assignor and beneficiary, including the right to proper statutory notice and due process regarding foreclosure. Plaintiff further argued that the enforcement of the GPTA by defendants resulted in an unconstitutional taking because it amounted to a taking of private property for public use and plaintiff did not receive just compensation for the taking.

Defendants contended that no violation of due process occurred because the recorded forfeiture certificate, at a minimum, gave plaintiff constructive notice of the forfeiture and the impending foreclosure proceedings and that the certified notices sent to BankBoston at the address indicated by the FDIC website and a second address were sufficient to comply with due process. Defendants also asserted that plaintiff was on notice of the forfeiture and the pending foreclosure because the April 15, 2001, mortgage assignment from BankBoston to plaintiff was recorded after the certificate of forfeiture was recorded. According to defendants, neither plaintiff's nor its predecessor's interest in the property could be identified by public records because plaintiff's interest had yet to be recorded when the forfeiture certificate was issued, and

because neither the first mortgage nor the mortgage assignments were in the chain of title when the forfeiture certificate was recorded because the first mortgage incorrectly referred to lot 88. Further, defendants claimed that it was unclear whether plaintiff actually had an interest in the property because the 1998 assignment from BankBoston to plaintiff was purportedly executed before BankBoston obtained an interest in 2000. Defendants also denied that an unconstitutional taking without just compensation occurred because plaintiff's interest in the property ended upon foreclosure.

The Court of Claims found in favor of plaintiff, concluding that it was denied due process. The court found that defendants did not afford BankBoston or its trustee, plaintiff, due process because Title Check failed to mail notice to BankBoston's last known address as identified in the mortgage assignment and characterized that address as the address reasonably calculated to apprise BankBoston and plaintiff, its trustee, of the then pending hearings. The court further concluded that in regard to MCL 211.78i(9), BankBoston was an owner of a property interest entitled to notice. To that end, the court concluded that the subsection did not preclude plaintiff from raising the due process claim for itself or on behalf of its beneficiary, BankBoston, because neither was properly served. The Court of Claims entered a judgment in plaintiff's favor together with interest calculated under MCL 600.6455(2).

II. Standards of Review

Following a bench trial, a trial court's findings of fact are reviewed for clear error and its conclusions of law are reviewed de novo. *Glen Lake-Crystal River Watershed Riparians v Glen Lake Ass'n*, 264 Mich App 523, 531; 695 NW2d 508 (2004). A finding is clearly erroneous when, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made. *Id.* Resolving this issue involves questions of statutory interpretation, which are reviewed de novo. *Griffith v State Farm Mut Automobile Ins Co*, 472 Mich 521, 525-526; 697 NW2d 895 (2005). "The primary goal of statutory interpretation is to ascertain and give effect to the Legislature's intent[,]" and the "Legislature is presumed to have intended the meaning it plainly expressed." *Linsell v Applied Handling, Inc*, 266 Mich App 1, 15; 697 NW2d 913 (2005). If statutory language is clear and unambiguous, we are required to apply the statute as written. *Id.* Whether a party has been afforded due process is a question of law that is reviewed de novo. *Reed v Reed*, 265 Mich App 131, 157; 693 NW2d 825 (2005).

III. Entitlement to Notice

Defendants argue that the Court of Claims effectively concluded that plaintiff was statutorily entitled to notice and this constitutes error requiring reversal. While plaintiff's interest was not recorded until after the certificate of foreclosure was filed, BankBoston was entitled to notice as a trust beneficiary that retained a properly recorded interest in the property. Accordingly, under the circumstances of this case, we do not find any error in the Court of Claims decision.

Under MCL 211.78i, an interest holder identified in the records of the register of deeds is entitled to notice if identifiable before a certificate of forfeiture is recorded. MCL 211.78i(1) provides that, once a property has been forfeited to the county treasurer under § 78g, MCL 211.78g, the foreclosing governmental unit is required to initiate a record search to identify the

property owners entitled to notice of the subsequent show cause hearing under § 78j, MCL 211.78j, and the foreclosure hearing under § 78k, MCL 211.78k. The notice provisions of § 78i(6) that were in effect in 2001, when the notices were sent, provided:[3]

> The owner of a property interest is entitled to notice under this section of the show cause hearing under section 78j and the foreclosure hearing under section 78k if that owner's interest was identifiable by reference to any of the following sources before the date that the county treasurer records the certificate[4] required under section 78g(2):
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> (a) Records in the office of the county register of deeds.
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> (b) Tax records in the office of the county treasurer.
>
> (c) Records in the office of the local assessor.
>
> (d) Records in the office of the local treasurer.

The notice provisions in § 78i "are designed to ensure that those with an interest in the subject property are aware of the foreclosure proceedings so that they may take advantage of their redemption rights." *In re Petition by Wayne Co Treasurer*, 265 Mich App 285, 292-293; 698 NW2d 879 (2005).

A. BankBoston's Entitlement to Notice

Plaintiff is the trustee for the BankBoston Home Equity Loan Trust 1998-1, and BankBoston is the servicer of the trust pursuant to a power of attorney and a servicing agreement. As such, BankBoston is a beneficiary that retained a property interest when it assigned the mortgage to plaintiff. Therefore, for purposes of MCL 211.78i(6), BankBoston was an owner of a property interest entitled to notice at the time the state was required to send notices. See *Bankers' Trust Co of Detroit v Russell*, 263 Mich 677, 682; 249 NW 27 (1933) (reasoning that a trustee holds interest in property for the benefit of another). Further, pursuant to MCL 600.2041, plaintiff, as trustee, is statutorily permitted to file a lawsuit on behalf of BankBoston, its beneficiary. See *American Family Ass'n of Michigan v Michigan State Univ Bd of Trustees*, 276 Mich App 42, 51; 739 NW2d 908 (2007) (noting that a plaintiff must meet both the statutory and constitutional requirements in order to have standing). Ultimately, given the relationship between plaintiff and BankBoston and BankBoston's initial ownership of a property interest and continuing beneficial ownership interest in that property interest, it is irrelevant whether plaintiff was entitled to notice under MCL 211.78i(6) because BankBoston, its

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[3] This section was amended by 2003 PA 263, effective January 5, 2004, and has since been amended by 2006 PA 611, effective January 3, 2007.

[4] The certificate refers to the certificate of forfeiture. MCL 211.78g(2).

beneficiary, was entitled to notice that it did not receive as required by statute, and plaintiff was allowed to bring suit on its behalf.

B. Erroneous Property Description

Defendants assert that, because the first mortgage of Homestead improperly described the property as lot 88 instead of lot 66, those subsequently recorded instruments that correctly described the property as lot 66 were nevertheless unidentifiable for purposes of the period when the foreclosing entity was required to search the register of deeds to identify interests in the property as provided under the applicable version of MCL 211.78i(6). However, defendants mistakenly assert that those instruments were outside the chain of title, i.e., undiscoverable at the register of deeds. MCL 565.28(1) requires every register of deeds to keep a general index to each set of books by alphabetically entering the name of each party to each recorded instrument. This grantor-grantee index creates the chain of title to a particular property. 1 Cameron, Michigan Real Property Law (3d ed), § 11.29, p 404. A person is on constructive notice of those instruments appearing within a chain of title. *Houseman v Gerken*, 231 Mich 253, 255; 203 NW 841 (1925).

Here, a search of the former owners' names would have revealed the name of the first mortgage provider, Homestead, and a search of Homestead's name would have revealed Investaid's name, thereafter revealing the name of BankBoston. Accordingly, those instruments were not outside the chain of title. Further, because the mortgage assignment to BankBoston accurately described the property, the foreclosing entity had, at a minimum, constructive notice of BankBoston's interest in the property. Cf. *Savidge v Seager*, 175 Mich 47, 59-60; 140 NW 951 (1913) (concluding that the recorded instrument did not provide constructive notice of an interest in the property because the description was too inaccurate).

IV. Notice and Due Process

Defendants claim that given the circumstances, the notices sent to the Rhode Island addresses were sufficient to satisfy due process. We disagree. As our Supreme Court has recently held, an address reasonably calculated to reach a person entitled to notice is the address listed on a recorded deed. *Sidun v Wayne Co Treasurer*, 481 Mich 503; 751 NW2d 453 (2008). Because defendants had BankBoston's address but choose to disregard it and send the notices to other addresses obtained from the Internet, defendants failed to provide minimal due process. *Id.* at 514-515.

A. Adequacy of Notice

The GPTA provides that state and federal due process standards, rather than specific provisions of the act, govern the adequacy of notice under the act:

> It is the intent of the legislature that the provisions of this act relating to the return, forfeiture, and foreclosure of property for delinquent taxes satisfy the minimum requirements of due process required under the constitution of this state and the constitution of the United States but that those provisions do not create new rights beyond those required under the state constitution of 1963 or the constitution of the United States. The failure of this state or a political

> subdivision of this state to follow a requirement of this act relating to the return, forfeiture, or foreclosure of property for delinquent taxes shall not be construed to create a claim or cause of action against this state or a political subdivision of this state unless the minimum requirements of due process accorded under the state constitution of 1963 or the constitution of the United States are violated. [MCL 211.78(2).]

See also Republic Bank v Genesee Co Treasurer, 471 Mich 732, 737; 690 NW2d 917 (2005).

Due process protects a real estate owner's interest in property. *Dow v Michigan*, 396 Mich 192, 204; 240 NW2d 450 (1976). Due process requires that an owner be given proper notice and an opportunity to contest a state's claim to take the property for the owner's failure to pay taxes. *Id.* at 196. "[N]otice must be sent to an address reasonably calculated to apprise the object of notice of the pending proceedings, and this requirement must be evaluated in the context of affording the object of notice minimal due process." *Republic Bank*, *supra* at 739. As the United States Supreme Court has stated, "'when notice is a person's due . . . [t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it[.]'" *Jones v Flowers*, 547 US 220, 229; 126 S Ct 1708; 164 L Ed 2d 415 (2006), quoting *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 314; 70 S Ct 652; 94 L Ed 865 (1950); *Dow*, *supra* at 211.

In light of our Supreme Court's decision in *Sidun*, *supra*, and after reviewing the evidence presented below, we conclude that the notices sent to BankBoston were not reasonably calculated to apprise it of the forfeiture hearings. BankBoston recorded its assignment from Investaid, and this assignment provided its Boston address, at which it continued to maintain an office after its merger with Fleet. Fleet is a large international bank with offices all over the country. Given the sheer size of Fleet and the offices it undoubtedly assumed as a result of the merger, Fleet determined the address where notices should be sent. Even after the merger, plaintiff still maintained the BankBoston address with the register of deeds as the proper place to receive notice regarding the property.

However, Title Check disregarded this address and instead chose to send notices to two Fleet addresses in Providence. It is unknown what relationship, if any, these Providence addresses had to either the property or the pending foreclosure. The notices sent were not reasonably calculated to apprise BankBoston of notice. Without any statutory authority, a foreclosing governmental unit lacks the power or discretion to determine the best business practices of private entities. On the basis of its own policies and procedures, BankBoston made the decision to provide its Boston address in the mortgage assignment. Plaintiff also listed the Boston address on the assignment recorded with the register of deeds and Fleet maintained that office at all times relevant to these proceedings. Defendants may not simply substitute their judgment with regard to where parties should receive notice. Through Title Check, defendants were aware of BankBoston's Boston address and failed to send notice to that address.

> Interested parties are "entitled to have the [government] employ such means 'as one desirous of actually informing [them] might reasonably adopt' to notify [them] of the pendency of the proceedings." *Dow v Michigan*, 396 Mich 192; 240 NW2d 450 (1976), quoting *Mullane*, *supra* at 315. That is, the means

> employed to notify interested parties must be more than a mere gesture; they must be means that one who actually desires to inform the interested parties might reasonably employ to accomplish actual notice. *Mullane, supra* at 315. [*Sidun, supra* at 509.]

Accordingly, a party who desires or is required to provide notice of forfeiture and foreclosure proceedings to an entity with an interest in the real property may not simply disregard the address provided by that entity to the register of deeds. The Court of Claims did not err in concluding that defendants failed to satisfy due process.

B. Plaintiff's Assertion of Lack of Notice

Defendants also contend that plaintiff is barred from asserting lack of notice. We disagree. MCL 211.78i(9) provides:

> The owner of a property interest who has been properly served with a notice of the show cause hearing under section 78j and the foreclosure hearing under section 78k and who failed to redeem the property as provided under this act shall not assert any of the following:
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> (a) That notice was insufficient or inadequate on the grounds that some other owner of a property interest was not also served.
>
> (b) That the redemption period provided under this act was extended in any way on the grounds that some other owner of a property interest was not also served.

BankBoston was an owner of a property interest entitled to notice at the time the state was required to send notices and remained an owner of a property interest when it became the beneficial holder of the mortgage. Accordingly, under MCL 600.2041(1), plaintiff had standing to bring suit on BankBoston's behalf. Section 78 does not apply because plaintiff, as trustee of BankBoston, its beneficiary, had standing to pursue a due process claim against defendants, which failed to provide appropriate notice to satisfy due process. Because BankBoston did not receive statutorily required notice, defendants' argument is misplaced.

C. Constructive Notice

Defendants also argue that due process was satisfied because the forfeiture certificate was recorded before the mortgage assignment from BankBoston to plaintiff. We disagree.

Michigan is a race-notice state, MCL 565.29; *Richards v Tibaldi*, 272 Mich App 522, 539; 726 NW2d 770 (2006), and a recorded interest in property takes priority over subsequent owners and encumbrances, MCL 565.25(4); *Ameriquest Mortgage Co v Alton*, 273 Mich App 84, 94; 731 NW2d 99 (2006). However, it does not follow that recording a certificate of forfeiture is reasonably calculated to apprise the interested parties of the pending foreclosure. Rather, the onus is on the foreclosing governmental unit to provide notice, and a party that

records an instrument with the register of deeds is not required to determine whether anything has been filed regarding foreclosure. Again, as our Supreme Court has recently stated, "[a] party's ability to take steps to safeguard its own interests does not relieve the government of its constitutional obligation. *Sidun*, *supra* at 517. Had BankBoston and plaintiff received notice of the proceedings at the address recorded with the register of deeds, due process would have been satisfied.[5] See *Republic Bank*, *supra* at 742.

V. Interest

A. MCL 600.6455

In its cross-appeal, plaintiff argues that the Court of Claims erred by calculating interest based on MCL 600.6455(2) instead of subsection 1 because its interest in the property and its remedies were based on contract. We disagree. We review de novo questions of statutory interpretation. *Griffith*, *supra* at 525-526.

MCL 600.6455 provides, in pertinent part, as follows:

> (1) Interest shall not be allowed upon any claim up to the date of the rendition of judgment by the court, unless upon a contract expressly stipulating for the payment of interest. All judgments from the date of the rendition of the

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[5] Defendants' publication of the forfeiture proceedings was also insufficient to provide statutory notice:

> A notification method may be reasonable and constitutional if employing the method is reasonably certain to inform those affected," or, when circumstances do not reasonably permit such notice, if the method employed is not substantially less likely to provide notice than other customary alternative methods. *Mullane*, *supra* at 315. Notably, *Mullane* recognized that the reasonableness of a particular method could vary, depending on what information the government had. That case concerned a New York law that merely required notice by publication to inform beneficiaries of a common trust fund that the fund was subject to judicial settlement. *Id*. at 309-310. The Court held that while notice by publication was constitutionally sufficient with regard to beneficiaries whose interests or addresses were unknown, notice by publication was insufficient for beneficiaries whose names and addresses were known by the government. "Where the names and post-office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mails to apprise them of its pendency." *Id*. at 318. Notice by publication was inadequate in the case of known beneficiaries "because under the circumstances it is not reasonably calculated to reach those who could easily be informed by other means at hand." *Id*. at 319. [*Sidun*, *supra* at 510-511.]

> judgment shall carry interest at the rate of 12% per annum compounded annually, except that judgment upon a contract expressly providing for interest shall carry interest at the rate provided by the contract in which case provision to that effect shall be incorporated in the judgment entered. This subsection shall apply to any civil action based on tort filed on or after July 9, 1984 but before January 1, 1987 and any action pending before the court of claims on July 9, 1984. *This subsection shall apply to any action, other than a civil action based on tort, filed on or after July 1, 1984 and any action pending before the court of claims on July 9, 1984.*
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> (2) *Except as otherwise provided in this subsection, for complaints filed on or after January 1, 1987*, interest on a money judgment recovered in a civil action shall be calculated from the date of filing the complaint at a rate of interest which is equal to 1% plus the average interest rate paid at auctions of 5-year United States treasury notes during the 6 months immediately preceding July 1 and January 1, as certified by the state treasurer, and compounded annually, pursuant to this section. [Emphasis added.]

Plaintiff maintains that its action was not based in tort, and it seeks to use subsection 1 so that the interest on the judgment will be calculated using the rate provided in the mortgage contract. By its plain language, subsection 1 applies to any civil tort action filed before January 1, 1987, and to any other type of civil action filed on or after July 1, 1984. Subsection 2 applies to all actions filed on or after January 1, 1987. The action in the instant case was filed on April 7, 2003, and a violation of due process is a constitutional tort. See *Reid v Michigan*, 239 Mich App 621, 629; 609 NW2d 215 (2000) ("[T]ypically, a constitutional tort is committed by a governmental employee exercising discretionary powers so that constitutional rights personal to the plaintiff are thereby violated.") (internal quotation marks omitted). Although the underlying property interest arose from a contractual right, plaintiff's claim was based on a lack of due process, a constitutional tort, not the mortgage contract. Moreover, the interest plaintiff seeks was already recovered as part of the constitutional tort damages. Accordingly, the Court of Claims properly calculated interest under subsection 2.

B. Contracts Clause

Plaintiff claims that by operation of subsection 2, it has been denied the greater amount of interest that would have been due and payable under the promissory note. In light of this lesser amount of interest awarded, plaintiff argues that the contract rate in the underlying promissory note and mortgage must be respected to avoid violating the Contracts Clause of the federal and state constitutions. US Const art I, § 10; Const 1963, art 1, § 10. We disagree. Because this issue was not raised in the Court of Claims, it is unpreserved and our "review is limited to determining whether a plain error occurred that affected substantial rights." *In re Egbert R Smith Trust*, 274 Mich App 283, 285; 731 NW2d 810 (2007).

The Contracts Clause prohibition against any state law that impairs the obligations of contract is not absolute and must be "accommodated to the inherent police power of the State to safeguard the vital interest of its people." *Romein v Gen Motors Corp*, 436 Mich 515, 534; 462 NW2d 555 (1990) (internal quotation marks and citations omitted). The following three-pronged

test was established to determine whether the state's police power is valid with respect to the Contracts Clause:

> The first prong considers whether the state law has operated as a substantial impairment of a contractual relationship. The second prong requires that legislative disruption of contractual expectancies be necessary to the public good. The third prong requires that the means chosen by the Legislature to address the public need be reasonable. [*Health Care Ass'n Workers Compensation Fund v Director of the Bureau of Worker's Compensation*, 265 Mich App 236, 241; 694 NW2d 761 (2005).]

See also *Romein, supra* at 534-536. With regard to the first prong, this Court has concluded that retroactive application of a statute relating to interest where the statue required an insurer to pay more interest than that for which it had contracted did not constitute a violation of the Contracts Clause. *Cosby v Pool*, 36 Mich App 571, 575, 578; 194 NW2d 142 (1971). Accordingly, because the situation here is substantially similar, no plain error occurred.

VI. Unconstitutional Taking

Plaintiff argues that, because the subject property was sold for an amount well in excess of the taxes owed, the enforcement action here resulted in an unconstitutional taking without just compensation. Given our conclusion that the notices defendants sent to BankBoston failed to satisfy due process requirements, we need not address this issue.

Affirmed.

Cavanagh, J., concurred.

/s/ Kirsten Frank Kelly
/s/ Mark J. Cavanagh